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July 18, 2005

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2005 JUL 20 P 3:50

Lawrence H. Norton, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 5440 (formerly MUR 5626)  
NDN Political Fund

Dear Mr. Norton:

This letter is submitted in response to the notification received from the Federal Election Commission ("FEC") dated June 10, informing us that the Federal Election Commission ("FEC" or "Commission") has made an additional finding of reason to believe ("RTB") against our client, NDN Political Fund. Apparently, the legal theory underlying this new RTB finding is that NDN Political Fund may be a federal political committee, required to register with the FEC, because its "major purpose" may be to influence federal elections. This finding is based on an erroneous statement of the applicable law.

In response to the complaint filed in MUR 5626, copy attached, we laid out in great detail the applicable legal standard for determining whether or not NDN was a political committee. Under this standard, it is clear that NDN Political Fund is not a federal political committee. Thus, we disagree with the OGC analysis that the "major purpose" of NDN "requires further investigation." FLA at 7. The FLA does not set forth a clearly articulated legal theory that forms the basis of this finding. In fact, in support of this new finding, the Office of General Counsel ("OGC") cites only *FEC v. Survival Education Fund, Inc.*, F.3d 285, 295 (2<sup>nd</sup> Cir. 1995), quoting from the case as follows: "where a statement in a solicitation 'leaves no doubt that the funds contributed would be used to advocate [a candidate's election or] defeat at the polls, not simply to criticize his policies during the election year,' proceeds from that solicitation are contributions." FLA at 6. This legal standard supports the arguments made on behalf of NDN in response to this MUR in that it makes clear that donations are deemed "contributions" for purposes of triggering political committee status only if they are solicited for the purpose or making express advocacy communications. There is simply no evidence that NDN Political Fund solicited contributions using any language suggesting that the funds would be used to advocate a candidate's election or defeat. In fact, the FLA at 7 specifically notes that

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with respect to NDN's solicitations "none refers to a specific federal candidate or election," much less advocates the election or defeat of a federal candidate.

This additional finding, based on an alternative theory as to how a violation might be found, amounts to nothing more than a fishing expedition. OGC has yet to articulate a coherent legal theory upon which a violation might be found. Based on the investigation to date, the only facts determined by OGC suggest that NDN Political Fund did not solicit any funds suggesting that those funds would be used to make contributions or expenditures expressly advocating the election or defeat of any federal candidate, and that NDN Political Fund has not made any contributions or expenditures that expressly advocated the election or defeat of any federal candidate. Nothing in either or the two complaints filed nor in the FEC's investigation to date provides any basis for further investigation. There is simply no basis justifying further inquiry into this matter which serves only to cost NDN additional legal fees and related expenses. Thus, we request that the FEC close its file in this matter.

Sincerely,



Lyn Utrecht  
James Lamb

Attachment: Response to MUR 5626, February 3, 2005

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